



Docket No.: Y1929.0047
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Yoshinobu KANEYAMA

Serial No.: 09/198,849

Group Art Unit: 1725

Filed: November 24, 1998

Examiner: M. Elve

For: DEVICE MOUNTING METHOD

Box DAC
Assistant Commissioner for Patents
Washington, D.C. 20231

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**PETITION TO WITHDRAW HOLDING OF
ABANDONMENT UNDER 37 C.F.R. § 1.181(a)**

On May 17, 2002, Applicant's Attorneys received a Notice of Abandonment (attached as Exhibit A), dated May 8, 2002. The Notice states that since the Examiner did not receive a response to the Office Action dated October 10, 2001, the above-referenced application was held abandoned due to Applicant's failure to timely file a proper response. Applicant respectfully requests that the holding of abandonment in this case be withdrawn for the reasons set forth below.

Under 37 C.F.R. § 1.8(a), an Office Action response will be considered timely filed, whether or not the Patent Office has actually received it, if it is deposited in the mail before the response deadline along with a certificate stating the date when the response was mailed. See also MPEP § 512. In cases where the Patent Office fails to receive a response to an Office Action and holds an application abandoned as a result, 37 C.F.R. § 1.8(a)

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states that the Patent Office should withdraw its holding of abandonment if the applicant demonstrates that he, in fact, timely filed his response, and the applicant also:

(1) Informs the Office of the previous mailing or transmission of the [Office Action] promptly after becoming aware that the Office has no evidence of receipt of the [Office Action];

(2) Supplies an additional copy of the previously mailed or transmitted [Office Action] and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to previous timely mailing or transmission. If the [Office Action] was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

37 C.F.R. 1.8(b); see also MPEP § 512 and 711.04(c).

On January 7, 2002, I faxed to the Patent Office Applicant's response to the outstanding Office Action, a copy of which is enclosed herewith as Exhibit B. This filing of Applicants' response was timely as the three month shortened statutory period was not due to expire until January 10, 2002.

As seen in Applicants' response, I also included a signed certificate of facsimile transmission that certifies that Applicant's response was "sent to the U.S. Patent and Trademark Office via facsimile transmission to the attention of Examiner Elve at No. (703) 872-9418, on January 7, 2002". After transmitting Applicant's response by facsimile, a report confirming the transmission thereof was generated. A copy of this report is attached

hereto as Exhibit C. In light of the above, Applicants' response should be considered timely filed in accordance with 37 C.F.R. § 1.8(a).

Moreover, on May 22, 2002, I placed a telephone call to Examiner Elve regarding the Notice of Abandonment. Examiner Elve informed me that she did not have the file in her possession and would obtain the file and call me regarding the Notice. Approximately two weeks later, I placed a follow-up phone call to the Examiner and left a message on her voicemail. To date, I have not heard from Examiner Elve, and are thus filing this Petition to have the holding of abandonment withdrawn.

Therefore, for the reasons discussed above, it is respectfully requested that the Patent Office consider the Applicants' response as being timely filed under 37 C.F.R. §§ 1.8 (a) and (b), and that the holding of abandonment of this application be withdrawn.

Dated: June 25, 2002

Respectfully submitted,

By Richard LaCava

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV059556725US, in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on the date shown below.

Dated: June 25, 2002

Signature: Richard LaCava